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December 27, 2016

VIA ECF

Honorable Allyne R. Ross
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Janfeshan v. USCBP, et al.*, 16-CV-6915 (ARR) (RM) (E.D.N.Y.)

Dear Judge Ross:

We write in the wake of Defendants' second letter, filed earlier today. We do so reluctantly and apologize for what we continue to believe is an unnecessary string of filings initiated by the Defendants.

At the December 9, 2016 status conference, when the parties were last before this Court in the related matter of *Janfeshan v. Kerry*, 16-CV-4324 (Ross, J.) (Bloom, M.J.) (E.D.N.Y.) ("*Janfeshan I*"), Magistrate Judge Bloom ordered Defendants to refrain from searching Plaintiff Hemad Janfeshan's smartphone until the Court had an opportunity to rule on the propriety of any such search. *Janfeshan I*, Status Conf. Tr. 18, Dec. 9, 2016 ("[T]he government has said that they will not review anything on Mr. Janfeshan's phone until this is reviewed, and that will remain in effect as a consent order, even if this case was closed out, the 16-4324."). To avoid any confusion, Plaintiff recently reiterated his intent to file a timely motion before this Court by no later than December 30, 2016. Pl.'s Resp., ECF No. 10.

Beyond bald assertions of their "responsibility and authority," Defendants have provided no explanation of precisely how they would be prejudiced if Plaintiff's motion were filed 48 hours later than when Defendants have arbitrarily decided it should be filed. This quibble over timing seems petty, at best.

The claims asserted in Plaintiff's December 14, 2016 Complaint in the instant matter are complex and require briefing beyond the motion filed in *Janfeshan I*. See Pl.'s Resp. at n.1, ECF No. 10 ("The claims in the pending Complaint ... and in Plaintiff's forthcoming motion, include but are not limited to those asserted in Plaintiff's earlier motion."). Now before this Court are weighty issues implicating the Fourth Amendment to the U.S. Constitution and the attorney-client privilege, issues that require briefing and argument in order to be adjudicated fairly.

By way of final clarification, Plaintiff was not ordered by Magistrate Judge Bloom to provide any additional information to the Court or to counsel for the Defendants. At the

December 9, 2016 conference, Magistrate Judge Bloom suggested that Plaintiff and Defendants alike consider and discuss a viable protocol. *Janfeshan I*, Status Conf. Tr. 20, Dec. 9, 2016 (“Again, my aim here is to get you both to think about an acceptable protocol for determining whether there is attorney/client privilege matters on the phone.”). Plaintiff simply agreed that both parties should think and confer. *Id.* at 20 (“We’re not ... disputing that, Your Honor.”). As we have repeatedly indicated, we remain willing to confer with Defendants’ counsel in this matter. *See, e.g.*, Pl.’s Resp., ECF No. 10 (“Plaintiff remains ready to confer with Defendants as this litigation proceeds.”).

The Court should deny Defendants’ unreasonable request and should order that Plaintiff file his motion as soon as possible and, in any event, by no later than December 30, 2016; that Defendants file their response seven days after the motion’s filing, with Plaintiff’s reply due seven days after the filing of Defendants’ response; and that oral argument be scheduled thereafter.

Respectfully submitted,

_____/s/_____
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